

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Section 203.01, F.S., imposes a tax of 2.5 percent upon the gross receipts of every person that receives payment for any utility service, defined in s. 203.012, F.S, as electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power. The gross receipts tax was created in 1931, and in 1963 the Florida Constitution was amended to place all gross receipts tax revenue in a trust fund for university and junior college capital outlay and to allow bonds to be issued for this purpose. The constitution was amended again in 1974 to allow gross receipts tax revenue to be bonded for public school capital outlay expenditures.

When the gross receipts tax was enacted and for most of its history, utility services were provided by regulated monopolies. The gross receipts tax was a stable revenue source, and collection of the tax from utility providers was efficient and easy to administer. Even though the statutory imposition of the tax is on the person who receives payment for any utility service, it is understood that the tax is passed on to consumers of the utility services, and the law provides for separately stating the tax on the customer's bill. The law also provides for gross receipts taxation of electricity produced by cogeneration or by small power producers, or any person other than a cogenerator or small producer who produces electrical energy for his or her own use.

The gross receipts tax statute does not address the situation in which electricity or natural or manufactured gas is purchased outside the state for use in the state. Retail sales of electricity have not been deregulated in Florida. However, natural gas purchases outside the state for use in the state, arranged either by the final users of the gas or by gas marketers, have been occurring since 1990, and have become a significant part of the market. Changes adopted by the Public Service Commission in 1990 allowed Florida customers to purchase gas from out-of-state vendors. In these transactions, the purchase of gas was (and remains) not subject to gross receipts tax because the tax is on the vendor, which was not a Florida business. Additionally, a 1992 Technical Assistance Advisement by the DOR stated that the gross receipts tax was not applicable to transportation services charges because the statute imposes a tax on persons who receive payment for a utility service, and transportation does not meet the statutory definition of utility service. The state does receive payment from the gross receipts tax on utility service on business done within this state, or between points within this state.

GROSS RECEIPTS TAX AND NATURAL GAS MARKETERS

Natural gas marketers and DOR disagree over whether the marketers are required to pay the gross receipts tax. According to DOR, natural gas marketers believe that they do not provide a utility service and therefore are not subject to the gross receipts tax. However, both sides agree that if the marketers

were required to pay all the back taxes, penalties, and interest DOR believes may be owed, many of the marketers would be forced out of business. To resolve this situation, DOR and the marketers are proposing an amnesty or forgiveness of all back taxes, penalties, and interest as long as the marketers register with DOR to pay the tax now and into the future. Both DOR and the marketers believe the amnesty is a reasonable solution to prevent lengthy and expensive audits and litigation over this situation.

PROPOSED CHANGES:

The bill addresses the issue of forgiveness, or amnesty, for unpaid gross receipts taxes, penalties, and interest which may be due on the sale or transportation of natural gas for consumption in this state if:

- the sales were made prior to July 1, 2004, and
- the gross receipts were derived from one of the following:
 - the sales were by persons not regulated by chapter 366, Florida Statutes, relating to public utilities;
 - the written sales agreement provided for transfer of title to the gas outside of Florida;
 - the sales were of transportation services associated with the sales of gas; or
 - the sales were to persons eligible for a sales tax exemption for certain charges for electricity or steam used to operate machinery and equipment.

The forgiveness is limited to sellers that register with the Department of Revenue (DOR) by July 1, 2004, and make application for forgiveness by October 1, 2004. The amnesty is not available for any taxes, penalties, or interest that has been assessed if the assessment is final and has not been timely challenged, or for any tax, penalty, or interest that has been previously paid to DOR unless the payment is the subject of an assessment that is not final or that has been timely challenged. The amnesty is also not available for tax billed to or collected by the seller as an itemized charge to customers. The executive director of DOR is given authority to adopt emergency rules to implement the amnesty. Notwithstanding any other law, the emergency rules remain in effect until the later of the date that is six months after the date of adoption of the rule or the date of final resolution of all amnesty applications filed under this section.

The bill amends s. 203.01, F.S., to provide that every person that receives payment for any natural or manufactured gas for light, heat, or power must report those sales to DOR and pay gross receipts tax at the appropriate rate. This change replaces the term "utility service" with the term "natural or manufactured gas for light, heat, or power," which is contained in the definition of "utility service" under s. 203.012(1), F.S.

The bill also levies a tax on gross receipts received by a distribution company for its sales of electricity for light, heat, or power, if the electricity is delivered to a retail consumer in the state who pays the distribution company a charge for both the electricity and the transportation. The gross receipts of a distribution company that sells and delivers utility services to a retail consumer are taxable as they are under current law. If a distribution company delivers electricity to a retail consumer but does not sell the electricity, the distribution company's receipts are taxed at a per-unit rate. This rate is set annually, based on the Florida price per kilowatt hour for residential, commercial, or industrial retail consumers, as applicable, as published by the United States Energy Information Administration. The amount of tax due is reduced by any gross receipts tax or similar tax paid to another state or U.S. territory when purchasing the electricity.

The bill also extends the gross receipts tax to any person who imports electricity for that person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under ch. 203, F.S. This tax is based on the cost price of the electricity. The amount of tax owed may be reduced if a gross receipts or similar tax was paid. The provisional changes to the collection of the

gross receipts tax on electricity will not be applicable unless or until the electric utility market is deregulated in the future.

Further, the bill provides for the following exemptions from the gross receipts tax:

- The transportation of natural or manufactured gas to a public or private utility either for resale or for use as fuel in the generation of electricity;
- The delivery of electricity to a public or private utility for resale within or without the state (applies only if the resale is in compliance with DOR rules and regulations);
- The wholesale sale of electric transmissions;
- The use of natural gas to produce oil or gas or the use of natural or manufactured gas to transport natural or manufactured gas; or
- The sale or transportation to, or use of, natural or manufactured gas by a person eligible for an exemption under s. 212.08(7)(ff), F.S., (certain manufacturers) for use as an energy source or raw material.

Moreover, the bill states that it does not imply that a tax is due on separately stated charges for the transportation of natural or manufactured gas.

Section.203.012, F.S., is amended and defines "distribution company" to mean any person owning or operating local electric utility distribution facilities within this state for the distribution of electricity to the retail consumer. The bill gives DOR executive director emergency rulemaking authority to implement the provisions of s. 203.01, F.S. The emergency rules would remain in effect for six months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

This act shall take effect January 1, 2005, except as otherwise provided herein,.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Natural gas marketers have a responsibility to meet certain criteria to obtain amnesty.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The executive director of DOR is given authority to adopt emergency rules to implement the amnesty.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES